



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 2, 1991

Ms. Myra S. Chickering  
Attorney for Rice Consolidated I.S.D.  
Vinson & Elkins  
3300 First City Tower  
1001 Fannin  
Houston, Texas 77002-6760

OR91-454

Dear Ms. Chickering:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 13400.

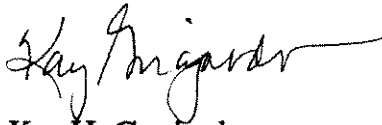
Rice Consolidated Independent School District (the district) has received a request for all documents "which relate to the 'investigation' conducted by the district, or to the conclusions underlying your memorandum of August 5, 1991." More specifically, the request includes (1) tape recordings of statements made in the course of the investigation; (2) notes of interviews; and (3) discipline referral forms. The information is requested by the employee of the district who underwent the disciplinary investigation. You claim that the requested information is excepted from required public disclosure by sections 3(a)(1), 3(a)(3), 3(a)(11), and 3(a)(14) of the Open Records Act.

A section 3(a)(3) exception may be properly invoked if litigation is pending or may be reasonably anticipated and if the requested information relates to that litigation. Open Records Decision No. 555 (1990). Section 3(a)(3) forces parties to a lawsuit to obtain relevant information through the normal process of discovery, if at all. Open Records Decision No. 551 (1990). The Open Records Act was not intended to provide parties to litigation any earlier or greater access to information than was already available through discovery, nor was it intended to provide a method of avoiding the rules of discovery altogether. *Id.*

The attorney requesting the information on behalf of the district employee does so expressly "in order to prepare a defense to [legal action] (which has already been threatened) and to prepare to disprove [the district's] conclusions to the board of trustees." The request, the attorney states, is made pursuant to the district employee's "due process rights" and is intended to secure information which will help in defense of his client. Clearly, litigation may be anticipated. On its face, the requested information relates to the anticipated litigation. Unless the information has already been inspected pursuant to court order or discovery, you may withhold the requested information under section 3(a)(3).

Because case law and prior open records decisions issued by this office resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-454.

Very truly yours,



Kay H. Guajardo  
Assistant Attorney General  
Opinion Committee \*

KG/GK/lcd

Enclosures: Open Records Decision No. 551

Ref.: ID#s 13400, 13367, 13571

cc: Mr. Richard L. Arnett  
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